

### **REMARKS**

Favorable reconsideration, reexamination, and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks.

#### **Allowed Claims and Allowable Subject Matter**

Applicant gratefully acknowledges that Claims 27-37 have been allowed, and that the Office Action indicates, at pages 1 and 7, that the subject matters of Claims 41 and 52 are free of the prior art. By way of the foregoing amendments, Claims 41 and 52 have been placed in independent form. Applicant has also revised Claim 27 to move certain subject matter into a new (dependent) Claim 63, which subject matter is not necessary for the allowability of Claim 27 as indicated in the Statement of Reasons for the Indication of Allowable Subject Matter appearing at page 7 of the Office Action. In addition, Applicant has the following comments on the Statement.

While the claimed combinations are patentable over the prior art for at least the reasons presented in the Statement, the claimed combinations are patentable for many more reasons. More specifically, the patentability of the claimed combinations is not limited to the particular subset of features identified in the Statement, but rather it is the entire combinations of elements in the claims, each claim taken as a whole, that are patentable over the prior art, the prior art documents taken both alone and in hypothetical combination.

#### **Objection to the Claims**

At page 2 of the Office Action, Claims 31, 42, and 43 were objected to because of alleged informalities. Applicant respectfully requests reconsideration of this objection.

Applicant has closely reviewed each of Claims 31, 42, and 43, and cannot locate the specific words and/or phrases identified in the Office Action as the sources of the objections. Clarification of the Office Action is therefore respectfully requested.

### Rejection under 35 U.S.C. § 102

In the Office Action, beginning at page 3, Claims 38-40, 46-48, 50, 51, 54, and 57 were rejected under 35 U.S.C. § 102, as reciting subject matters that allegedly are anticipated by *Klein*. Applicant again respectfully requests reconsideration of this rejection.

Claim 38 relates to an expandable medical device having a combination of elements including, *inter alia*, a transition between the cross sectional area of the elongated beams orthogonal to the beam length and the cross sectional area of the ductile hinges orthogonal to the hinge length is an abrupt transition on both circumferential sides of the beams.

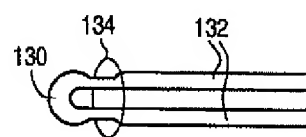
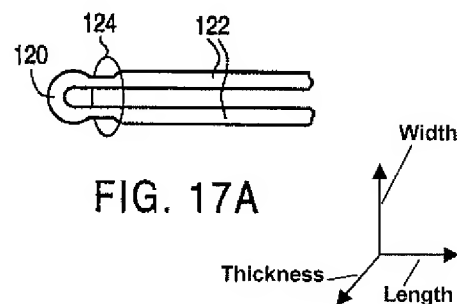
Claim 50 relates to an expandable medical device having a combination of elements including, *inter alia*, a transition between the cross sectional area of the elongated beams orthogonal to the beam length and the cross sectional area of the ductile hinges orthogonal to the hinge length is an abrupt transition on both circumferential sides of the beams.

Claim 57 relates to an expandable medical device having a combination of elements including, *inter alia*, a transition between the cross sectional area of the struts orthogonal to the strut length and the cross sectional area of the ductile hinges orthogonal to the ductile hinge length is an abrupt transition on both circumferential sides of the struts.

The prior art, including *Klein*, fails to identically disclose or describe devices having combinations of elements as recited in the pending claims.

Applicant has, in the Personal Interview and the Amendments filed April 24<sup>th</sup> and November 15<sup>th</sup>, described in detail aspects of the present invention, and how it is that *Klein* does not anticipate the claimed subject matter. Applicant will therefore not further burden the record with redundant summaries, instead focusing on yet further failings of *Klein*'s device.

Applicant has reproduced *Klein*'s Figs. 17A and 18A herein, annotated with the reference



frame define in the claims, to assist in a better understanding of *Klein*'s device.

*Klein*'s embodiments of Figs. 17 and 18 are, for the purposes of distinguishing the subject matters of the pending claims, essentially identical. As can be plainly seen in Figs. 17 and 18, the width of *Klein*'s struts 122, 132 includes a thinner portion, in the circumferential (width) direction; the Office Action appears to infer that, from this change in the width of the struts, there is a change in the cross sectional area of the strut orthogonal to the strut length. While the transition from the width of each strut to the width of each thinner portion is largely unclear from the simplistic illustrations of Figs. 17 and 18, it is clear that only one circumferential side of each strut 122, 132 includes any change in shape; indeed, only the 'outer' portions of the struts change shape at these thinner portions, while the 'inner' portions remain the same.

Thus, *Klein* fails to identically disclose or describe an expandable medical device as recited in the combinations of the pending claims, at least because *Klein*'s struts' cross-sectional areas do not include abrupt transitions as recited in the pending claims.

For at least the foregoing reasons, Applicant respectfully submits that the subject matters of Claims 38-40, 46-48, 50, 51, 54, and 57 are not anticipated by *Klein*, are therefore not unpatentable under 35 U.S.C. § 102, and therefore respectfully requests withdrawal of the rejection thereof under 35 U.S.C. § 102.

### **Rejection under 35 U.S.C. § 103(a)**

In the Office Action, beginning at page 4, Claims 42-44, 45, 49, 53, 56-60, 61, and 62 were rejected under 35 U.S.C. § 103(a), as reciting subject matters that allegedly are obvious, and therefore allegedly unpatentable, over *Klein* alone, or in hypothetical combination with *Kusleika*, *Ndondo-Lay*, or statements made in Applicant's Specification's Background section. Applicant respectfully requests reconsideration of these rejections.

Applicant first notes that Claim 57 has been rejected under both section 102 (above) and under section 103, without further explanation; the Office Action is therefore unclear, under which statutory section Claim 57 has been rejected. Clarification is respectfully requested.

The prior art, including, *Klein*, *Kusleika*, and *Ndondo-Lay*, fails to identically disclose or

fairly suggest the subject matters of the pending claims.

*Klein*, *Kusleika*, and *Ndondo-Lay* fail to make up for the deficiencies of *Klein* alone with respect to the subject matters of Claims 42-44, 45, 49, 53, 56-60, 61, and 62, at least because none disclose, describe, or suggest an abrupt transition in the cross-sectional area of *Klein*'s struts, as recited in the combinations of the pending claims. Thus, assuming *arguendo* that one would somewhere find motivation to modify *Klein*'s device in the manner alleged in the Office Action to be obvious, the resulting hypothetical construct would still not include each and every feature recited in the combinations of the pending claims.

For at least the foregoing reasons, Applicant respectfully submits that the subject matters of Claims 42-44, 45, 49, 53, 56-60, 61, and 62, each taken as a whole, would not have been obvious to one of ordinary skill in the art at the time of Applicant's invention, are therefore not unpatentable under 35 U.S.C. § 103(a), and therefore respectfully requests withdrawal of the rejection thereof under 35 U.S.C. § 103(a).

#### **New Claim**

Claim 63 has been added as a new dependent claim from allowable Claim 27, and is therefore also allowable.

**Conclusion**

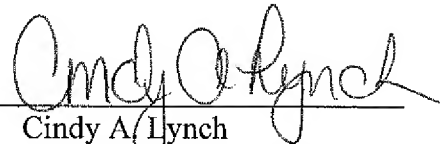
Applicant respectfully submits that the present patent application is in condition for allowance. An early indication of the allowability of this patent application is therefore respectfully solicited.

If Ms. Houston believes that a telephone conference with the undersigned would expedite passage of this patent application to issue, she is invited to call on the number below.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. If, however, additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and the Commissioner is hereby authorized to charge fees necessitated by this paper, and to credit all refunds and overpayments, to our Deposit Account 50-3100.

Respectfully submitted,

By:



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